

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0253P
Negligence Penalty
For Years 1998, 1999, and 2000

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ISSUE

I. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is in the business of selling and renting construction equipment to contractors, manufacturers, mining companies, and others from five locations out of state and four locations in Indiana. During the tax years in question, taxpayer did claim receipts as required by statute. However, taxpayer failed to correctly assess its liability at the correct tax rate.

I. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Taxpayer claims that because it reported its receipts to the Department, albeit at the incorrect rate, that the penalty should be waived. Taxpayer feels that the discrepancies involved were not substantial enough to warrant having penalties assessed, especially in light of taxpayer's attempts to comply with the law. Finally, taxpayer claims that it has installed safeguards that will prevent such mishaps in the future.

However, the auditor claims, and taxpayer does not refute, that in prior years the company, albeit in a different corporate form, had undergone an audit where the correct tax rate was revealed to taxpayer. This kind of information could have and should have been relied upon by the taxpayer when computing its liabilities from the point of that prior audit forward.

It is the taxpayer's responsibility to correctly assess and remit taxes. Reasonable care on the part of the taxpayer would have included knowledge gained from previous audits. Failure to use said knowledge is proof of taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Reasonable care should be taken regardless of the magnitude of the potential liability. Finally, subsequent remedial measures provide no evidence that a taxpayer is not negligent.

FINDING

The taxpayer's protest is respectfully denied.